

03-23094

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV-HUCK

RICHARD DELEON

Plaintiff,

CIV. ACTION:

vs.

MAGISTRATE JUDGE
TURNOFF

COMPLAINT FOR
PATENT INFRINGEMENT

HOME PRODUCTS INTERNATIONAL
INC.; K MART Corporation;
and JOHN DOES 1-10

Defendants

PLAINTIFF, RICHARD DELEON, sues DEFENDANT, HOME PRODUCTS
INTERNATIONAL, INC., K MART CORPORATION; and JOHN DOES 1-10 and states as follows:

JURISDICTION AND VENUE

1. This is an action for injunctive and other relief under the Federal Patent Act, 35 U.S.C.

Section 101, *et seq.* for design patent infringement.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1338(a).

3. Venue is proper under 28 U.S.C. 1400(b), 28 U.S.C. 1391(b) and 1391 (c)

in that the wrongful acts committed by Defendant occurred in or originated from the Southern District of Florida.

4. Plaintiff, RICHARD DELEON, is an individual residing in Miami-Dade County, Florida.

5. Defendant, HOME PRODUCTS INTERNATIONAL, INC. (hereinafter HPI), is a corporation which manufactures a combined toothbrush and toothpaste holder (hereinafter "Holder") which is sold in the Southern District of Florida and is the subject of this litigation. This product was produced sometime beginning in 2002. A copy of the Holder is attached as EX. A.

6. Defendant- K MART CORPORATION and JOHN DOES 1-10 are retailers who have stores in the Southern District of Florida which sell and/or offer for sale the Holder.

7. Plaintiff developed a unique and ornamental design for a combined toothpaste pump and

toothbrush holder.

8. Plaintiff applied for a U.S. Patent for said design which resulted in the issuance of U.S. Patent No. Des. 306,811 ("the 811 patent") duly and properly to Plaintiff in 1990. Exhibit B.

9. Long since the issuance of the 811 patent, Defendant-HPI commenced the manufacture, distribution in commerce, and/or sale of the Holder which is substantially similar and confusingly similar to Plaintiff's design appearing in the 811 patent.

10. Defendant-HPI's Holder is so similar to the design appearing in the 811 patent that an ordinary consumer, seeing the Holder and the 811 patent for the first time, would purchase one believing it to be the other.

11. The use by Defendant-HPI of the design of its Holder is without the consent, license, or permission of Plaintiff.

12. All Defendants have infringed and are now infringing the claims of the 811 patent by making, using, and/or selling the Holder.

13. All Defendants' aforesaid acts constitute infringement of the 811 Patent in violation of the Patent Act, 35 U.S.C. 271.

14. Defendants' aforesaid acts have caused and will cause great and irreparable injury to Plaintiff, and unless said acts are restrained by this Court, Plaintiff will continue to suffer great and irreparable injury.

15. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays that:

a. This Court will adjudge that the 811 patent has been infringed as a direct and proximate result of the acts of Defendants as set forth in this Complaint in violation of Plaintiff's rights under the Patent Act, 35 U.S.C. §101, *et seq.*

b. All Defendants, and all officers, directors, agents, servants, employees, attorneys, successors, and assigns, and all persons in active concert or participation therewith, be preliminarily and permanently enjoined and restrained from using any design substantially similar or confusingly similar to the design shown in the 811 patent;

- c. All Defendants be required to deliver up for destruction all Holders in their possession or control which infringe on the 811 patent.
- d. All Defendants be directed to file with this Court and to serve upon Plaintiff within thirty (30) days after service of the injunction issued in this action, a written report under oath, under oath, setting forth in detail the manner of compliance with the above.
- e. Plaintiff recover all of Defendants' profits arising from all of Defendants' acts of patent infringement and that the Court enter judgment, in addition to the amount of the recovery based on profits or damages, for such sum as the Court shall find to be just, and in addition to the amount of actual damages found, such sums shall be in an amount three (3) times the amount of the actual damages found.
- g. Plaintiff have and recover, pursuant to the laws of the State of Florida, in addition to his actual damages, punitive damages in an amount which the Court deems just and proper.
- h. Plaintiff have and recover both prejudgment and post-judgment interest on each and every damage award.
- i. Plaintiff have and recover his reasonable attorney's fees incurred in this action.
- j. Plaintiff have and recover its taxable costs and disbursements herein.
- k. Plaintiff have other and such further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a jury trial on all triable issues herein.

Dated: November 20, 2003

GREGG GOLDFARB, ESQ.
Attorney for Plaintiff
Fla. Bar No.: 0987123
19 West Flagler Street
Miami, Florida 33130
Tel.: 305.371.2538
Fax: 305.539.9432



Ex. A

United States Patent [19]
DeLeon

[11] Patent Number: Des. 306,811

[45] Date of Patent: .. Mar. 27, 1990

[54] COMBINED TOOTHPASTE PUMP AND
TOOTHBRUSH HOLDER

[76] Inventor: Richard A. DeLeon, 17120 SW. 94
Ave., #402, Miami, Fla. 33157

[10] Term: 14 Years

[21] Appl. No.: 932,482

[22] Filed: Nov. 18, 1986

[32] U.S. Cl. D6/531; D6/524;
D6/527

[38] Field of Search D6/524, 527-528,
D6/531, 534-535; 211/118-119, 112-113, 13,
60.1, 63-66, 74-75, 86-87; 248/110, 311.2,
312.1

[56] References Cited

U.S. PATENT DOCUMENTS

D. 62,389 S/1923 Balmer D6/531

D. 154,464 7/1949 Day D6/531
D. 239,799 5/1976 Fontaine D6/531
D. 278,586 4/1983 Thompson D6/531

Primary Examiner—Wallace R. Burke

Assistant Examiner—Brian N. Vinson

Attorney, Agent or Firm—Malin, Haley & McHale

[57] CLAIM

The ornamental design for a combined toothpaste pump
and toothbrush holder, as shown and described.

DESCRIPTION

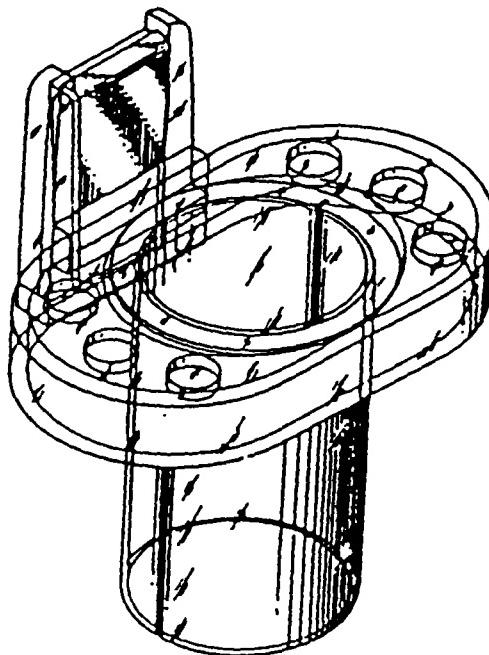
FIG. 1 is a top plan view of a combined toothpaste
pump and toothbrush holder showing my new design;
FIG. 2 is a right side elevation view thereof, with the
left side being a mirror image;

FIG. 3 is a rear elevational view thereof;

FIG. 4 is a front elevational view thereof;

FIG. 5 is a bottom plan view thereof; and

FIG. 6 is a perspective view thereof.



EX. B

U.S. Patent Mar. 27, 1990

Sheet 1 of 2

D306,811

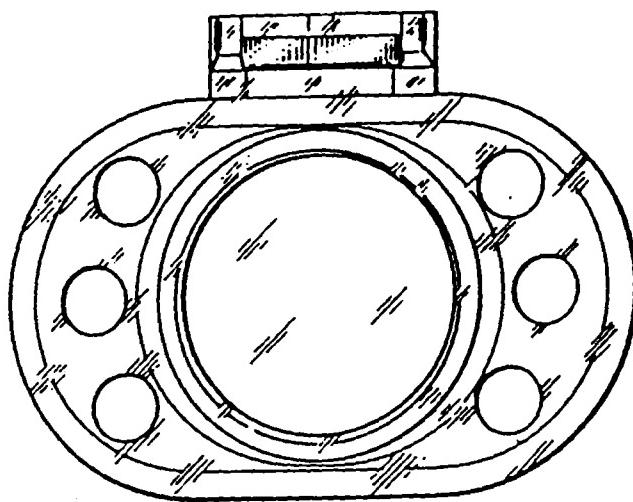


FIG. 1

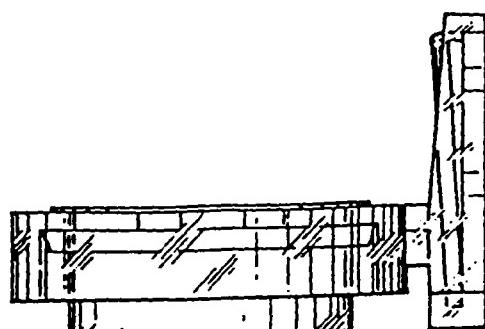


FIG. 2

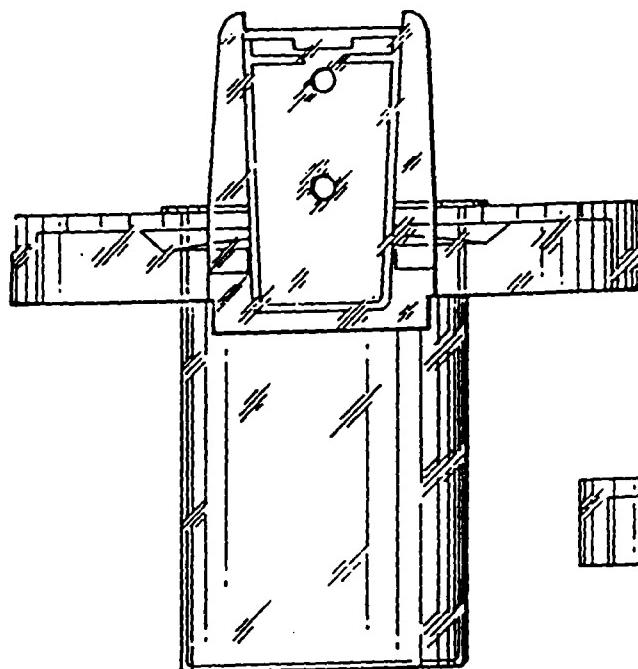


FIG. 3

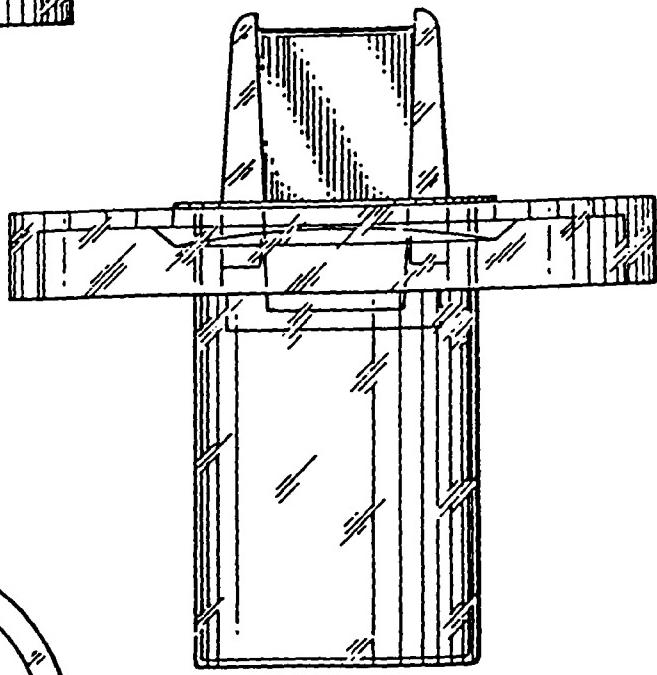


FIG. 4

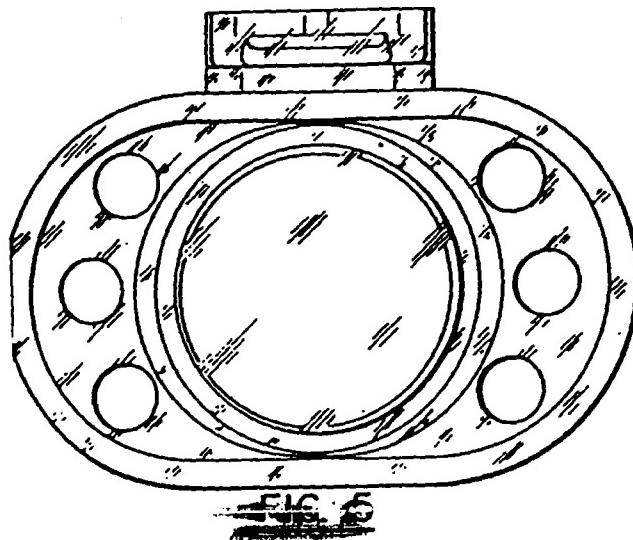


FIG. 5

U.S. Patent

Mar. 27, 1990

Sheet 2 of 2

D306,811

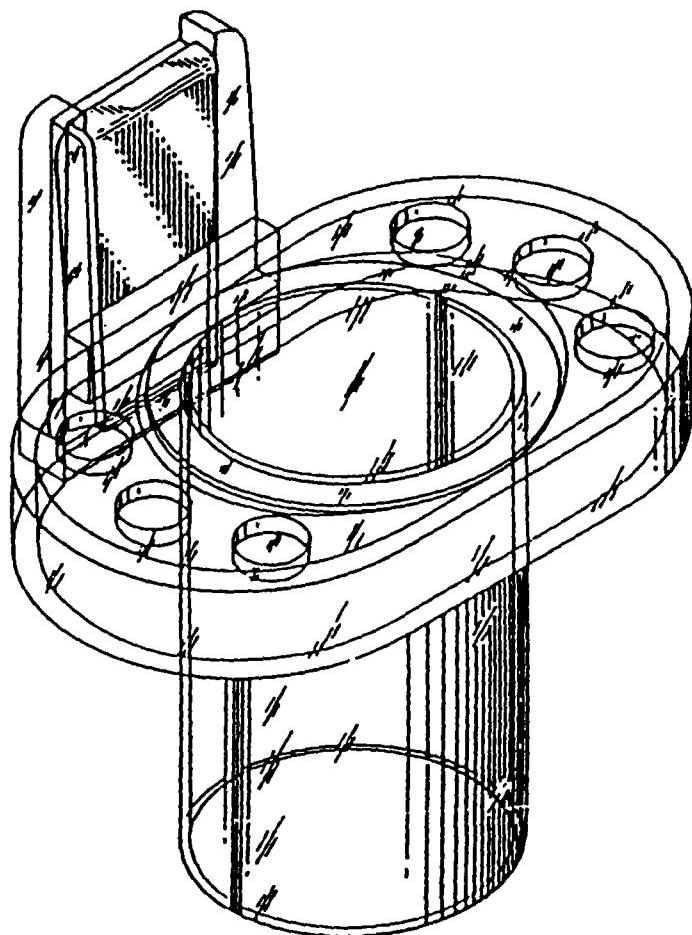


FIG. 6

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Richard Deacon

DEFENDANTSHorn & Products International
CIV-HUCK Knott Corp.**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**

(EXCEPT IN U.S. PLAINTIFF CASES)

Miami-Dade (726)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

Macarthur (726) (PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, STATE THE LOCATION OF THE TRACT OF LAND IN CONDEMNATION

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**ATTORNEYS (IF KNOWN)**Graig Goldfarb, Esq.
100 S. Flagler St., Ft. Lauderdale, FL 33301**(d) CIRCLE COUNTY WHERE ACTION AROSE:** DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF DEF

Citizen of This State

 1 1

Incorporated or Principal Place of Business In This State

 4 4

Citizen of Another State

 2 2

Incorporated and Principal Place of Business In Another State

 5 5

Citizen or Subject of a Foreign Country

 3 3

Foreign Nation

 6 6**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or ReopenedTransferred from
 5 another district (specify) 6 Multidistrict LitigationAppeal to District Judge from
 7 Magistrate Judgment**V. NATURE OF SUIT**

(PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders Suits
- 190 Other Contract
- 195 Contract Product Liability

A TORTS

- | | |
|--------------------------------------------------------------|-------------------------------------------------------------------------|
| PERSONAL INJURY | PERSONAL INJURY |
| <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury - Med Malpractice |
| <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability |
| <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability |
| <input type="checkbox"/> 330 Federal Employers Liability | |
| <input type="checkbox"/> 340 Marine | PERSONAL PROPERTY |
| <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 370 Other Fraud |
| <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 371 Truth in Lending |
| <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage |
| <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 385 Property Damage Product Liability |

FORFEITURE/PENALTY

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R & Truck
- 650 Airline Regs
- 660 Occupational Safety/Health
- 690 Other

A BANKRUPTCY

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

A OTHER STATUTES

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 810 Selective Service
- 850 Securities/Commodities/ Exchange
- 875 Customer Challenge 12 USC 3410
- 891 Agricultural Acts
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Information Act

A REAL PROPERTY

- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

A CIVIL RIGHTS

- 441 Voting
- 442 Employment
- 443 Housing/ Accommodations
- 444 Welfare
- 440 Other Civil Rights

PRISONER PETITIONS

- 510 Motions to Vacate Sentence
- 530 General
- 535 Death Penalty
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition

A PROPERTY RIGHTS

- 820 Copyrights
- 830 Patent
- 840 Trademark

A LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt Relations
- 730 Labor/Mgmt Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation

B SOCIAL SECURITY

- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS

- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

35 USC 101

LENGTH OF TRIAL

via 14 days estimated (for both sides to try entire case)**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23**DEMAND \$**CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO**VIII. RELATED CASE(S)** (See instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

11/21/03

SIGNATURE OF ATTORNEY OF RECORD

Hraig Knott

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT _____

APPLYING IFFP _____

JUDGE _____

MAG. JUDGE _____

11/24/03